

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:08CR314
)	
v.)	
)	
SIDNEY R. SMITH,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the court on the defendant's oral motion for a psychiatric and psychological evaluation and a hearing on his present mental condition. On November 26, 2008, the defendant entered a plea of guilty to a charge of being a felon in possession of a firearm. Filing No. 18, Minute Entry. Defendant has presented substantial information indicating that he may presently be suffering from a mental disease or defect. Filing No. 25, Affidavit of Counsel ("Aff."); Filing No. 26, Index of Evidence. He has also shown that an inpatient evaluation is necessary. Filing No. 25, Aff. at 2. The government has no objection to such an evaluation.

The court finds the defendant has shown that he "may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care and treatment in a suitable facility." 18 U.S.C. § 4244(a). The court also finds that a psychiatric and psychological evaluation is warranted to determine the defendant's current mental status and to enable the court to determine an appropriate sentence. See 18 U.S.C. § 3552 (b)&(c). Under 18 U.S.C. § 4244(b), if a report "includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall

also include an opinion by the examiner concerning the sentencing alternatives that could best accord the defendant the kind of treatment he does need.” 18 U.S.C. § 4244(b).

Further, the court finds that there is a compelling reason for the evaluation to be done by the Bureau of Prisons and there are no adequate professional resources available in the local community to perform the evaluation. 18 U.S.C. § 3552(b). The court recommends that the Bureau of Prison’s Medical Center for Federal Prisoners in Springfield, Missouri, perform the evaluation. Accordingly,

IT IS ORDERED:

1. The defendant is remanded to the custody of the United States Bureau of Prisons for a full presentence psychiatric and psychological evaluation.
2. The report shall include the information required pursuant to 18 U.S.C. § 4247(c) and 4244(b).
4. The report shall be completed on or before **March 20, 2009**.
5. Sentencing is rescheduled to **April 23, 2009, at 1:30 p.m.**, Courtroom No. 3, Roman L. Hruska U.S. Courthouse, 111 South 18th Plaza, Omaha, Nebraska.

DATED this 22nd day of December, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge